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OCT 25 2010

FOLEY AND LARDNER LLP
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WASHINGTON DC 20007

OFFICE OF PETITIONS

In re Application of :
Landesmann :
Application No. 09/888,439 : DECISION ON APPLICATION
Filed: June 26, 2001 : FOR
Atty Docket No. **084561-0108** : PATENT TERM ADJUSTMENT

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT FOR PATENT APPLICATION UNDER 37 CFR § 1.705(b)/(d)," filed April 6, 2010, which is properly treated under 37 CFR 1.705(b). Applicants request that the initial Determination of Patent Term Adjustment under 35 U.S.C. 154(b) be corrected from four hundred and eighty-two (482) days to one thousand, two hundred and forty-three (1,243) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PALM and PAIR screens to reflect that the patent term adjustment determination at the time of the mailing of the notice of allowance is **one thousand, two hundred and eighty-eight (1,288) days** (1,529 days of Office delay - 241 days of applicant delay). A copy of the updated PAIR screen is enclosed.

On January 25, 2010, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 482 days. Applicants timely filed the instant application for patent term adjustment.¹

¹ PALM finance records indicate the issue fee was paid on April 7, 2010.

Applicants dispute the reductions for applicant delay for the filing an Information Disclosure Statements (IDS) on December 18, 2006², October 23, 2007, March 18, 2008.

A review of the application file history reveals that the Information Disclosure Statements filed October 23, 2007, March 18, 2008, and April 10, 2009, were filed after the filing of a Notice of Appeal on September 20, 2005, and during a period during which the application was under appellate review. The reductions were not warranted. **Accordingly, the reductions of 403 days, 67 days, and 298 are being removed.**

It is also noted that applicant suggests that an adjustment to the patent term adjustment of 56 is warranted pursuant to 37 CFR 1.702(a)(3) for the failure of the Office to act on the application not later than four months after the date of a decision by the Board of Patent Appeals and Interferences where at least one allowed claim remains. Applicant's argument is well taken, however, the period of adjustment is 38 days, not 56 days with said period beginning August 19, 2009, the day after the date that is four months after the date of a final decision by the Board of Patent Appeals and Interferences where at least one allowable claim remains, and ending on January 25, 2010, the date of mailing of a notice of allowance. See 37 CFR 1.703(a)(5). **Accordingly, a period of adjustment of 38 days is being entered.**

The \$200.00 fee as set forth in 37 CFR 1.18(e) was received. No additional fees are required.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

² No reduction to the patent term adjustment was entered for the IDS filed December 18, 2006.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3222.

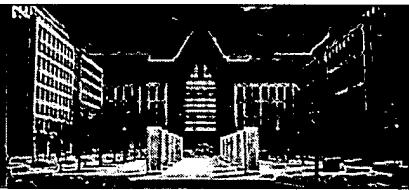
/Kenya A. McLaughlin/

Kenya A. McLaughlin
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PAIR Screen



Patent
Term
Adjustments

[PTA/PTE Information](#)[Patent Term Adjustment](#)[Patent Term Extension](#)

Application Number*: 09888439

[Search](#)[Explanation of PTA Calculation](#)[Explanation of PTE Calculation](#)**PTA Calculations for Application: 09888439**

Application Filing Date		06/26/2001	Overlapping Days Between (A and B) or (A and C)		0
Issue Date of Patent			Non-Overlapping USPTO Delays		1491
1	A Delays	62	PTO Manual Adjustment		806
	B Delays	0	Applicant Delay (APPL)		1009
	C Delays	0	Total PTA (days)		1288

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
173	10/21/2010		P028	Adjustment of PTA Calculation by PTO	<u>38</u>	0	0
172	10/21/2010		P028	Adjustment of PTA Calculation by PTO	<u>768</u>	0	0
164	01/25/2010		MN/.	Mail Notice of Allowance	0	0	0
160	01/13/2010		MEXIN	Mail Examiner Interview Summary (PTOL - 413)	0	0	0
163	01/12/2010		IREV	Issue Revision Completed	0	0	0
162	01/12/2010		DVER	Document Verification	0	0	0
161	01/12/2010		N/.	Notice of Allowance Data Verification Completed	0	0	0
159	01/07/2010		CNTA	Notice of Allowability	0	0	0
157	12/30/2009		LET.	Miscellaneous Incoming Letter	0	0	0
158	12/14/2009		EXIN	Examiner Interview Summary Record (PTOL - 413)	0	0	0
155	11/10/2009		LET.	Miscellaneous Incoming Letter	0	0	0
154	08/18/2009	09/20/2009	MAPDP	Mail BPAI Decision on Appeal - Affirmed in Part	<u>1429</u>	65	0
153	08/17/2009		APDP	BPAI Decision - Examiner Affirmed in Part	0	0	0
152	07/31/2009		MM327-E	Mail BOA miscellaneous communication to applicant	0	0	0
151	07/31/2009		M327-E	BOA miscellaneous communication to applicant	0	0	0
150	06/26/2009		APCH	Confirmation of Hearing by Appellant	0	0	0
149	06/24/2009		MAPPD	Mail Hearing Postponement Denied	0	0	0
148	06/23/2009		APPD	Hearing Postponement Denied	0	0	0
147	06/19/2009		APPH	Postponement of Oral Hearing Request	0	0	0
145	05/27/2009		APNH	Notification of Appeal Hearing	0	0	0
146	05/13/2009		APOH	Request for Oral Hearing	0	0	0
141	04/29/2009		APPH	Postponement of Oral Hearing Request	0	0	0
156	04/10/2009		IDSC	Information Disclosure Statement considered	0	0	0
143	04/10/2009		RCAP	Reference capture on IDS	0	0	0
142	04/10/2009	06/16/2008	M844	Information Disclosure Statement (IDS) Filed	<u>298</u>	123	0
140	04/10/2009		WIDS	Information Disclosure Statement (IDS) Filed	0	0	0
139	04/02/2009		APNH	Notification of Appeal Hearing	0	0	0
138	04/02/2009		APNH	Notification of Appeal Hearing	0	0	0
136	10/16/2008		AP_DK_M	Docketing Notice Mailed to Appellant	0	0	0
135	10/15/2008		APAS	Assignment of Appeal Number	0	0	0
137	10/10/2008		LET.	Miscellaneous Incoming Letter	0	0	0
132	09/11/2008		MEXIN	Mail Examiner Interview Summary (PTOL - 413)	0	0	0
131	09/05/2008		EXIN	Examiner Interview Summary Record (PTOL - 413)	0	0	0
130	08/28/2008		APWD	Appeal Awaiting BPAI Docketing	0	0	0
129	08/11/2008		MRBNE	Mail Reply Brief Noted by Examiner	0	0	0
128	08/08/2008		RBNE	Reply Brief Noted by Examiner	0	0	0
144	07/14/2008		M844	Information Disclosure Statement (IDS) Filed	0	0	0
127	07/14/2008		IDSC	Information Disclosure Statement considered	0	0	0
126	07/14/2008		WIDS	Information Disclosure Statement (IDS) Filed	0	0	0
125	06/18/2008		TCRD	Return of Undocketed appeal to the TC	0	0	0
124	06/18/2008		FWDX	Date Forwarded to Examiner	0	0	0
123	06/16/2008		APRB	Reply Brief Filed	0	0	0
121	04/23/2008		PACC	Exam. Ans. Review Complete	0	0	0
120	04/16/2008		MAPE2	Mail Supplemental Examiner's Answer	0	0	0
119	04/14/2008		APE2	2nd or Subsequent Examiner's Answer to Appeal Brief	0	0	0
118	03/18/2008		IDSC	Information Disclosure Statement considered	0	0	0
117	03/18/2008		RCAP	Reference capture on IDS	0	0	0
116	03/18/2008	01/11/2008	M844	Information Disclosure Statement (IDS) Filed	<u>67</u>	111	0
115	03/18/2008		WIDS	Information Disclosure Statement (IDS) Filed	0	0	0
114	03/04/2008		DOCK	Case Docketed to Examiner in GAU	0	0	0
113	02/02/2008		APBR	Appeal Brief Review Complete	0	0	0
112	02/02/2008		FWDX	Date Forwarded to Examiner	0	0	0
111	01/11/2008		RPEA	Resp. to post-examiner ans.	0	0	0
110	12/31/2007		MPEAC	Mail Post-examiner ans. com	0	0	0
109	12/27/2007		PEAC	Post-examiner ans. com	0	0	0
108	12/18/2007		MM327	Mail Miscellaneous Communication to Applicant	0	0	0

107	12/10/2007	APRD	Order Returning Undocketed Appeal to the Examiner	0
106	12/05/2007	APWD	Appeal Awaiting BPAI Docketing	0
105	11/29/2007	M327	Miscellaneous Communication to Applicant - No Action Count	0
103	10/23/2007	IDSC	Information Disclosure Statement considered	0
102	10/23/2007	RCAP	Reference capture on IDS	0
101	10/23/2007	09/15/2006 M844	Information Disclosure Statement (IDS) Filed	403 73
100	10/23/2007	WIDS	Information Disclosure Statement (IDS) Filed	0
104	07/17/2007	IDSC	Information Disclosure Statement considered	0
99	07/17/2007	M844	Information Disclosure Statement (IDS) Filed	0
98	07/17/2007	WIDS	Information Disclosure Statement (IDS) Filed	0
97	05/23/2007	MRBNE	Mail Reply Brief Noted by Examiner	0
96	05/21/2007	RBNE	Reply Brief Noted by Examiner	0
95	04/30/2007	IDSC	Information Disclosure Statement considered	0
91	04/30/2007	WIDS	Information Disclosure Statement (IDS) Filed	0
90	04/30/2007	M844	Information Disclosure Statement (IDS) Filed	0
74	03/24/2007	FWDX	Date Forwarded to Examiner	0
94	02/27/2007	IDSC	Information Disclosure Statement considered	0
89	02/27/2007	WIDS	Information Disclosure Statement (IDS) Filed	0
88	02/27/2007	M844	Information Disclosure Statement (IDS) Filed	0
93	12/18/2006	IDSC	Information Disclosure Statement considered	0
72.7	12/18/2006	M844	Information Disclosure Statement (IDS) Filed	0
72	12/18/2006	WIDS	Information Disclosure Statement (IDS) Filed	0
75	09/15/2006	APOH	Request for Oral Hearing	0
73	09/15/2006	APRB	Reply Brief Filed	0
71	07/17/2006	MAPEA	Mail Examiner's Answer	0
70	07/10/2006	APEA	Examiner's Answer to Appeal Brief	0
69	04/26/2006	FWDX	Date Forwarded to Examiner	0
68	04/20/2006	AP.B	Appeal Brief Filed	0
67	04/20/2006	XT/G	Request for Extension of Time - Granted	0
92	11/15/2005	IDSC	Information Disclosure Statement considered	0
66.7	11/15/2005	M844	Information Disclosure Statement (IDS) Filed	0
66	11/15/2005	WIDS	Information Disclosure Statement (IDS) Filed	0
65	09/20/2005	08/20/2005 N/AP	Notice of Appeal Filed	31 63
64	09/20/2005	XT/G	Request for Extension of Time - Granted	0
63	05/20/2005	MCTFR	Mail Final Rejection (PTOL - 326)	0
62	05/16/2005	CTFR	Final Rejection	0
61	03/10/2005	TSSCOMP	IFW TSS Processing by Tech Center Complete	0
59	03/10/2005	FWDX	Date Forwarded to Examiner	0
60	02/02/2005	LET.	Miscellaneous Incoming Letter	0
48	01/31/2005	RCAP	Reference capture on IDS	0
46.7	01/31/2005	M844	Information Disclosure Statement (IDS) Filed	0
46	01/31/2005	WIDS	Information Disclosure Statement (IDS) Filed	0
44	12/28/2004	MEXIN	Mail Examiner Interview Summary (PTOL - 413)	0
43	12/15/2004	EXIN	Examiner Interview Summary Record (PTOL - 413)	0
42	11/29/2004	10/14/2004 MCTRS	Mail Restriction Requirement	46 38
41	11/29/2004	CTRS	Requirement for Restriction / Election	0
58	09/17/2004	ELC.	Response to Election / Restriction Filed	0
39	09/17/2004	FWDX	Date Forwarded to Examiner	0
38	06/14/2004	03/11/2004 A...	Response after Non-Final Action	95 35
37	06/14/2004	XT/G	Request for Extension of Time - Granted	0
36	06/14/2004	WAMD	Workflow incoming amendment IFW	0
40	01/21/2004	EXIN	Examiner Interview Summary Record (PTOL - 413)	0
35	12/11/2003	MCTNF	Mail Non-Final Rejection	0
34	12/01/2003	CTNF	Non-Final Rejection	0
33	11/13/2003	FWDX	Date Forwarded to Examiner	0
31	11/13/2003	FWDX	Date Forwarded to Examiner	0
29	11/13/2003	ABN9	Disposal for a RCE / CPA / R129	0
32	10/14/2003	AMSB	Amendment Submitted/Entered with Filing of CPA/RCE	0
30	10/14/2003	09/19/2003 RCEX	Request for Continued Examination (RCE)	25 23
28	10/14/2003	XT/G	Request for Extension of Time - Granted	0
27	09/09/2003	MCTAV	Mail Advisory Action (PTOL - 303)	0
26	09/05/2003	CTAV	Advisory Action (PTOL-303)	0
25	08/23/2003	FWDX	Date Forwarded to Examiner	0
24	08/20/2003	A.NE	Amendment after Final Rejection	0
23	06/19/2003	MCTFR	Mail Final Rejection (PTOL - 326)	0
22	06/16/2003	CTFR	Final Rejection	0
18	04/10/2003	FWDX	Date Forwarded to Examiner	0
57	03/11/2003	AF/D	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received	0
56	03/11/2003	AF/D	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received	0
55	03/11/2003	AF/D	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received	0
54	03/11/2003	AF/D	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received	0
53	03/11/2003	AF/D	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received	0
17	03/11/2003	12/11/2002 A...	Response after Non-Final Action	90 15
16	03/11/2003	XT/G	Request for Extension of Time - Granted	0
15	09/11/2002	08/26/2002 MCTNF	Mail Non-Final Rejection	16 -1
14	09/08/2002	CTNF	Non-Final Rejection	0
13	05/24/2002	A.PE	Preliminary Amendment	0
11	05/01/2002	MPTDI	Mail-Petition Decision - Dismissed	0
9	04/23/2002	DOCK	Case Docketed to Examiner in GAU	0
12	03/05/2002	A.PE	Preliminary Amendment	0
10	03/05/2002	PET.	Petition Entered	0
52.7	01/29/2002	M844	Information Disclosure Statement (IDS) Filed	0
52	01/29/2002	WIDS	Information Disclosure Statement (IDS) Filed	0
7	12/31/2001	MPTDE	Mail-Petition Decision - Denied	0
51.7	11/08/2001	M844	Information Disclosure Statement (IDS) Filed	0
51	11/08/2001	WIDS	Information Disclosure Statement (IDS) Filed	0
50	10/30/2001	A.PE	Preliminary Amendment	0
5	10/16/2001	DOCK	Case Docketed to Examiner in GAU	0
49.7	09/24/2001	M844	Information Disclosure Statement (IDS) Filed	0

49	09/24/2001	WIDS	Information Disclosure Statement (IDS) Filed	0
6	09/24/2001	PET.	Petition Entered	0
4	07/27/2001	OIPE	Application Dispatched from OIPE	0
3	07/25/2001	C.AD	Correspondence Address Change	0
2	07/05/2001	SCAN	IFW Scan & PACR Auto Security Review	0
1	06/26/2001	IEXX	Initial Exam Team nn	0

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